

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 729 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

VIRPUR JUTHA SEVA SAHAKARI      MANDLI VIRPUR

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Appearance:

MR AJ DESAI, APP, for Petitioner

MR KB ANANDJIWALA for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/09/98

ORAL JUDGEMENT

1. The state of Gujarat, being aggrieved by the judgment and order dated 25th April, 1990, passed by the Chief Judicial Magistrate, Rajkot, in Summary Case No.2051 of 1982, has preferred this appeal.
2. The facts of the case are that the present respondents were charged to have committed breach of

provisions of Essential Commodities Act punishable under Section 7 of the said Act read with paragraph 5 of the Fertilizer Control Order of 1957. Respondent No.1 is a co-operative society. Respondent No.2 is the Secretary of the society. Respondent No.3 is the Agricultural Inspector. It was a charge against the respondents that they were engaged in trading of fertilizer in absence of a valid registration certificate. It transpires that, on 8th October, 1980, a registration certificate valid for the year 1980-81 was not found and during the period commencing from 1st April, 1980 till 8th October, 1980, there were transactions in respect of fertilizer and, therefore, they were charged to have failed in getting the fertilizer certificate/licence renewed for the purpose. The respondents pleaded not guilty. The learned Chief Judicial Magistrate, after considering the evidence on record, came to a conclusion that, earlier respondents did possess a valid permit and because of death of one of the office bearers, there was a delay in renewal which has been subsequently renewed. The Trial Court also came to a conclusion that the documents on which the prosecution proposes to place reliance do not establish trading in fertilizer by respondents and, therefore, ultimately, acquitted the respondents.

3. While going through the record, it is found that no evidence to show that the respondents had dealt in the fertilizer in absence of a valid licence/registration. The prosecution has proposed to rely on a letter allegedly written by respondent No.2 on behalf of respondents No.1 and 2. While going through the record, it is found that these documents, though accepted, the contents are not properly proved. As such, there is no proof of these documents. The prosecution has failed to bring on record as to how the letter was received and whether there is any authenticity about such receipt, any endorsement, or any entry to indicate and establish the receipt of such letter during the course of transaction of official business by the office of the complainant or not. That being so, ultimate reliance cannot be placed on such document to convict the respondents of the charges levelled against them. Under these circumstances, the appellant, in view of this Court, has failed to show that the decision arrived at by the learned Chief Judicial Magistrate is patently erroneous or palpably unsustainable and, therefore, this Court is not inclined to entertain this acquittal appeal. The appeal is found to be devoid of merits and deserves to be dismissed.

4. The appeal is, therefore, dismissed. The

judgment and order dated 25th April, 1990, passed by the learned Chief Judicial Magistrate, Rajkot, in Summary Case No.2051 of 1982 is hereby confirmed.

[ A.L. DAVE, J. ]

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